PRESERVED

App. F. IX-4

Previous Referenees 1939. ( ) Courts

File No. 139-39

Serial Nos. 2-6
1-6

Letter References

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Sig ~~Secy~~

PRESERVED

Part B for December 1939

SUBJECT.

Explanation of Mr Narasimhaswamy, Magistrate, Seringapatam.

No. 3975 dt 8-12-39 to the Registrar, High Court States that the explanation is unsatisfactory.

WD 0295—GPB—22,500—13-8-37

R.B. Shamsher
16-12-39

CR 139-39-1

59.20/P

"ADJOURNED 38 TIMES"

STRICTURES ON TRIAL COURT PROCEEDINGS

MYSORE CHIEF JUSTICE ON LAW'S DELAYS

(FROM OUR CORRESPONDENT.)

BANGALORE, March 21.

The Chief Justice Sir D'Arcy Reilly and Mr. Justice Abdul Ghani of the Mysore High Court delivered judgment yesterday allowing the appeal preferred by the Government against the order of acquittal passed by the Special Magistrate, Seringapatam, on Mr. Seshagiriachar, a Muktiyar (a kind of pleader who can appear only in criminal courts in the State) who stood charged with the offence of criminal breach of trust in respect of Rs. 264-13-9 entrusted to him for being paid to the Government as contributions from three ryots of Hiremaruli Inam village in the Krishnarajpet Taluk, Mysore District, for the conversion of dry lands into wet lands under the Irwin Canal area.

The Chief Justice who delivered the judgment of the Bench found that the Muktiyar in question had committed the offence of criminal breach of trust and convicted him to undergo rigorous imprisonment for 3 months on each of the offence, the sentences to run concurrently, and to pay a fine of Rs. 200 or in default to undergo further rigorous imprisonment for a period of one month.

The Chief Justice made some severe strictures against the conduct of the case in the trial court.

LOWER COURT'S "UNSATISFACTORY PROCEDURE"

There were some things about the procedure of the Magistrate, the Chief Justice observed, which were very unsatisfactory. The Magistrate never examined the accused properly. He asked him one question and took the answer. The accused said he wished to put in a written statement and he did so. But that written statement did not explain his position and the Magistrate did not even ask the accused explicitly whether he denied that the amounts were entrusted to him. The Magistrate was wrong in not examining the accused in accordance with the provisions of Section 242 Cr. P. C. But his failure could not, in the opinion of the Chief Justice, have any defect on the result of the case. The accused was by occupation a Muktiyar, i.e. "a man who without having obtained the necessary qualifications professes to represent clients in the criminal courts". The accused was the last person who could reasonably represent that he was not acquainted with the elementary procedure of the criminal courts and that he did not know that he had a right to say anything in explanation of the evidence given against him by the prosecution or that he was not able to appreciate the effect of that very simple evidence.

There was, however, another aspect of the case, the Chief Justice observed, which had some effect upon the result of the case in the High Court. Chennamma, the complainant, presented her petition at the beginning of February, 1937. But, quite improperly, by dilatory proceedings, the case did not begin until September 1937. When it had begun at that late stage "perhaps it can hardly be believed, but it is a fact that it was adjourned 38 times". This way of conducting a case, the Chief Justice observed, could not fail to have very harassing effect on the accused and was in every way objectionable. The appeal against the acquittal came before the High Court more than two years after Chennamma had given her complaint. The court had to take that into consideration when dealing with the case.

After analysing the evidence in the case, the Chief Justice convicted the accused on the three charges of criminal breach of trust.

QUESTION OF SENTENCE

Referring to the question of sentence, the Chief Justice observed that such offences required very serious punishment. But considering the way in which the accused had been harassed by the case being spun out in "the discreditable way it was, I think it will be sufficient now if we impose a sentence of R. I. for 3 months for each of the offences, these sentences to run concurrently".

The Chief Justice also imposed a fine of Rs. 200 on the accused in default to further imprisonment for a period of one month.

Mr. Justice Abdul Ghani concurred.

Mr. Mirle N. Lakshminaranappa, Government Advocate, appeared for the appellant and Mr. H. V. Krishna Rao for the respondent.

REVENUE 23 MAR. 1939

OFFICE OF THE FIRST ... OF CIVIL
MAR 25 1939
No. 766

CHIEF SECRETARY 24 MAR. 1939 GOVT. OF MYSORE.

1) Chief Secy) 23/3

2) Put up. Who is the Magte at Pt. 8

23/3 23/3

Submitted

3) Mr M. Narasimhaswamy, who is an acting Second Grade Munsiff, is in Charge of the Special First Class Magistrate's Court at Seringapatam.

Chief Secy 24/3 24/3

4) By no means can Commissioner right. The D. G. S. & J. may obtain the right steps 25/3

(Secretary) 25/3

5) 25/3 25/3/39 27.3

Serial No.

28 MAR. 1939 GOVT. OF MYSORE

1) Submitted with a draft

CSR 28/3

2) For approval

BKR 28.3

Chief Secy

3) appd.

HMS 28/3

4)

5) Issue BKR 30.3

DM. Mysore

D.O No P 1194 Dt 31-3-39

Calls for the explanation of [illegible]

[illegible]

WD 0544—GPB—30,000—2-9-38

31

1529

File No. of 193 General and Revenue Secretariat

From

The District Magistrate Mysore Dist

G. 419/38-39 Dt 18.4.1939.

Forwards the explanation of Mr M. Narasimhaswamy Special Magistrate Seringapatam in respect of several adjournments granted by him in C.C. No 8 of (937)-38

10)

The Dist Magistrate has not offered his opinion on the explanation of the Magistrate.

The main reasons for the adjournments referred to in the High Court judgment are stated to be due to the delay in receipt of records and of the absence of the witnesses etc. on the days of trial.

It is a point for order as to whether the ~~High~~ ~~Court~~ ~~may~~ ~~be~~ ~~asked~~ explanation of the ~~High~~ Court Magistrate may be sent to the High Court for opinion.

11) A copy of the Judgment of the High Court of the Records of the Case may be sent

Sd
8.6.39

CAW 4/6

12)

Submit with draft and fair of a letter

CAW 2/6

Issued NO P 3 Dt 13) 9.6.39 BKR 14)

Sec A

6529
439
0

General and Revenue Secretariat | File No. | of 193 | [App. F. III-2

Serial No.

No. Dis. No 84/ of 19.7.39.

From

The Registrar, High Court

Forwards copy of judgment in C.A. No 29 of 1938-39 Ci-ge Court with the connected records, and with reference to para 11 supra

Com 31/7

The High Court may perhaps be requested to express its views on the explanation offered by the Magistrate

BKR 5.8.39

Law Secy

The file may be sent unofficially

BKR 9.8

Forwarded With Compliments Unofficially to the Registrar High Court Of Mysore for favour Of furnishing the opinion of the Judges Of the High Court on the explanation offered by Mr M. Narasimhaswamy

By order

BK Ramakrishnaiya

For Secretary to Govt Law Dept.

9.8.39

By 7/8 SECRETARIAT 8 AUG. 1939 GOVT OF MYSORE

REGISTRAR HIGH COURT 10. AUG. 1939

NOTE—Contn. Sheet.

5 Explanation of Mr. M. Narasimhaswamy. 439
Magistrate

Cls File No. of 193

General and Revenue Secretariat.

Serial No.

*R.O. 225
35-40

High Court of Mysore,
27th November 1939

OFFICE OF THE FIRST MEMBER OF COUNCIL
NOV 30 1939
No 5.2 ff

Returned with compliments to the Secretary to Government, Law Department.

Mr. Narasimhaswamy's explanation is unsatisfactory. The evidence recorded in the case was not at all long. The delay in the trial appears to have been due to lack of determination, want of business-like method and weakness in allowing adjournments. In his procedure and in his treatment of the case Mr. Narasimhaswamy made rather surprising mistakes, as he is still apt to do. He has been much less successful as a Magistrate than the High Court hoped. But he is hardworking and well intentioned. The High Court is of opinion that no further repremand than what was said by the Chief Justice in his judgment in Criminal Appeal No.29 of 1938-39 is necessary beyond saying that the explanation is not satisfactory.

Flag A.

J. Shamiengar
Registrar.

SECY LAW DEPT. 3662
27 NOV. 1939
GOVT OF MYSORE

1st Number

30.11.39

1/12/39

6/12

2.12.39

Explanation of Mr Narasimhaswamy

General and Revenue Secretariat. | C. File No. of 19 .. | [App. F. III-2

Serial No.

Submitted with a draft

Con 5/12

[In orders as to whether a letter to the High Court is necessary]

For approval

BKR 5.12.39

Law Secy

G Hir 6/12

DJ Rao BKR 6.12.39

To

The Registrar High Court

No P 3975 d 8.12.39

States that Mr Narasimhaswamy may be informed that he ~~may be~~ his explanation is unsatisfactory

B

NDH-Contn. Sheet.

Confidential

D.O. No P 5194 & 31.3.39
cs 139-39-2

G. R. S. App. F. 3.

GENERAL AND REVENUE SECRETARIAT.

(Continuation sheet draft form.)

Dear Sir,

I am desired to write in reference to an article in the "Hindu" of the 22nd March 1939 under the Caption "Adjourned 38 times" reporting that in the course of his judgment the Chief Justice passed severe strictures against the Special First Class Magistrate Seringapatam, in regard to the unsatisfactory manner in which an order of acquittal passed by that Officer in a Criminal Case launched against one Shesthagiriachar and to request that the explanation of the Magistrate may kindly be obtained and submitted to Govt very early

in the matter of examination of the accused, and of allowing the case to get adjourned 38 times

Yours sincerely

28/3

28/3

M.G. Venkin Esq B.A. B.L.,
Dist. Magistrate
Mysore Dist

WD 0436—GPB—10,000—17-10-33

D.O. No. P 5194

9

31st March 1939.

CONFIDENTIAL.

Dear Sir,

I am desired to invite reference to an article in the "Hindu" of the 22nd March 1939 under the caption "Adjourned 38 times" reporting that in the course of his judgment the Chief Justice passed severe strictures -- against the Special First Class Magistrate Seringapatam, regarding the unsatisfactory procedure of that officer in the matter of examination of the accused, and of allowing the case to get adjourned 38 times in a Crimina case launched against one Sheshagiriachar and to request that the explanation of the Magistrate may kindly be obtained and submitted to Government very early.

Yours sincerely,

M.G.Mehkri, Esq., B.A., LL.B.,
District Magistrate, Mysore

C5139-39-3

6529 2 938/10

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT.

No. G1- 419/38-39.
Encl. one

Dated, Mysore, the 18th April 1939

FROM

M. G. MEHKRI, ESQ., B.A., LL.B.,
District Magistrate, Mysore District.

RAJASEVAPRASAKTA
B.T. Kesaviengar, Esq., B.A.,
Chief Secretary to the Government of Mysore,
B A N G A L O R E.

SIR,

With reference to D.O. No. P. 5194 dated the 31st ultimo from the Under Secretary to Government calling for the explanation of the Special First Class Magistrate, Seringaptam, regarding the Strictures passed against him by the Chief Justice in Criminal Appeal No. 29 of 1938-39 on the file of the High Court against the judgment of the - Special First Class Magistrate, Seringaptam, passed in C.C. No. 8 of 1937-38 acquitting the accused, I have the honour to enclose herewith the explanation in original received from the Magistrate, as called for.

I have the honour to be,
S i r,
Your most obedient servant,

For District Magistrate,
Mysore District.
(Absent from Head Quarters)

REFERENCE: Copy of the letter of the Under Secretary to Government forwarded to me calling for my explanation in respect of the article published in the Hindu dated 22-3-39 under the caption "Adjourned 38 times" in respect of C.C.8/37-38 on the file of this court".

Most respectfully submitted

1. The case was instituted on 1-7-37 (according to the Registers maintained in the case. The records are not with me) and I took charge of the court on 26-8-37 by which time the case had undergone 2 adjournments from 1-7-1937 to 29-7-1937 and 23-8-37 a total period of a month and 23 days.

2. The accused appeared on 23-9-37 and the case was disposed off on 12-9-1938 within a period of less than a year from the date of appearance of the accused.

3. For a third time it had already been posted to (i) 11-9-37 and on that day the accused did not appear and his ~~(ii)~~ Lawyer undertook to get him and witnesses also were summoned for (ii) 23-9-37. The interval of the adjournments is 12 days - on that day the court worked from 11 A.M. to 6 P.M.

On the 23rd of September the complainant was partly examined and as the records had not come from the taluk office French Rocks, the case had to be adjourned to a long date of nearly 28 days and the case was posted to 21-10-37.

4. On the 21st correct memo of the records that were necessary was not filed by the complainant's lawyer and 3 days time was granted for the purpose and process also was ordered to issue to the canal clerk in French Rocks taluk. On this day the court worked from 11 to 7 P.M. and the case was posted to 23rd November.

5. On 23-11-37 only 1 witness had come. PW2 and he was examined and ~~sums~~ Summons were issued to them to 11-12-37 and an interval of 18 days and on that day the court worked from 11-7 P.M.

6. On the 11th December the Irwin Canal clerk was examined and none others were present and the case was adjourned to 20-1-38. The court worked from 11-6 P.M.

7. On the 20th January the court worked from 11-6.30 P.M and the case adjourned for want of time to 8-2-38(i) on this date the witnesses were absent and the complainant undertook to get them and the case was posted to a week ~~(ii)~~ 6-2-38 (ii) and from that date the case was posted to a Sunday 27th.(iii) On the 27th which happened to be sunday the case was taken up at 8.30 A.M. and 4 witnesses PW4 to 7 completely examined and the case was posted to 17th March—an interval of 18 days.

8 (i) On the 17th March the court worked from 11to 6 P.M. and at 5 P.M. C.C.476/36-37 a very old case pending for more than a year was taken up and the case was adjourned to a short date of 9 days—to 26-3-38.

(ii) On the 26th again the court worked from 11-6 P.M. and one witness PW3 examined, the other witnesses being absent the case was adjounred to 7th April—an interval of 13 days.

9(i) On the 7th April the accused's counsel was absent and the accused prayed for an adjournment and the case was adjourned to 14-4-38 after an interval of 7 days and the court worked from 11 to 6-50 P.M.

(ii) On the 14th one witness PW3 was examined. The other witnesses not being present the case was adjourned to 30-4-38 ~~on~~ an interval of 16 days—to 30-4-38. The court worked from 11 to 7-30 P.M. that day

(iii) On the 30th April again one witness was examined and the case was posted to 12-5-1938 because no other witnesses were present.

10(i) On the 12th May this case could not be taken up at all as a custody case C.C.615/37-38 in which ~~there were~~ a

a large number of accused were produced and I remember no other case was taken up that day except this from 11 to 7 p.m. and the case was adjourned to 18th. May, only an interval of 4 days (ii) and on that day the complainant's counsel himself wanted adjournment and the case was again posted to 5 days, 23, 24th May (iii) but on both days the requsite records did not come and custody case C.C. 585 and others were taken up. The case was posted to 10th. June.

11(i) On 10-6-38, 2 witnesses PW1 and 3 were ~~present~~ further cross examined and the court worked from 11 to 6 P.M. and the case was posted to the next day 11-6-38(ii) on which date again the cross examination of the complainant continued and on 11-6-38 one more witness was examined and no other witnesses were present and summons were issued to PW6 and 7 to 19th June an inverval of 8 days; (iii) on 19th June 2 witnesses PW7 and 10 examined and cross examined and PW6 was absent and the case was posted to 21st June to get him. Interval 2 days. On all these days the court worked from 11 to 6 P.M. (iv) On the 21st the cross examination of PW6 was dispensed ~~disposed~~ with and statement of the accused was recorded and the case was posted for arguments (v) to 23rd and it was posted to (vi) 28th for orders an inverval of 5 days (vii) the then charge was framed and the case was posted to two days 10/ 11th July.

12(i) On the 10th July it was sunday and application had been filed and arguments were heard on it at great length and time was again prayed for for ~~final~~ further arguments and look up references and the case was posted to 12th July, an interval of 2 days. (ii) on the 12th arguments heard and the case was posted to orders to 3 days - 15th; on the 19th order was passed on the application and all the witnesses were summoned for further cross examination to 30th (iii) on the 30th July the important witness Veradechar did not come and summons were ordered to him for the 12th Agusut an interval of 12 days.

13(1) On the 12th August PW3 examined and the case was posted to 24th August for the examination of defence evidence This day the court worked till 11 to 6 p.m.

(2) On the 24th 2 defence witnesses examined and the case was posted to 29th for arguments.

(3) On the 29th, the case was posted again for arguments to 1st for want of time and on the 1st arguments were heard and the case was posted to 9th for judgment and as the judgment was not ready that day the case was posted again to 12th September on which date the case was diposed off.

So I most respeetfully beg to submit (i) though the number of adjournments in this case appears to be large, the inverval between the adjournment dates is very small, except the first 4 or 5 adjournments (ii) Then the case was posted to very near dates as for example, I respectfully beg to submit to consecutive days as 26th and 27th February, 23rd and 24th June 1938; 10th and 11th July 1938; to 2 days as on 19th June to 21st June, and 23rd June, from 10th to 12th July, from the 29th August to 1st September and so on; 3 days as from 12th July to 15th July; 4 days as from 15th July to 19th July; 5 days as from 23rd June to 28th June; 7 days as from 7th April to 14th April 1938, 8 days as from 11th June to 19th June, 9 days as from 17th March to 26th March 1938, 13 days as on 26th March to 7th April. 16days as from 14th April to 30th April and 18 days from 27 th February to 17th March. Long adjournments between 20days and 28 days are given only two or 3 times for the purposes of getting the proper records as there would be no use multiplying adjournments in between. except it be where oral evidence has to be recorded and in all of which dates witnesses have been examined.

(2) In one or two adjournments the requisite records had not come from the taluk office and an adjournment of more then a fortnight had to be given for the production of the records and correct memo of the records wanted was not also filed.

(3) On three occasions the witnesses from the taluk office did not appear and I well remember it was stated the witnesses could not be spared because of the collecting season; also some adjournments had to be given, I most respectfully beg to submit because summons had to be sent to both the taluks of Seringapatam and

and French Rocks one after the other according to the place mentioned in the memo for requisition of records after the summons were returned from one taluk authorities stating that the concerned records have been sent away to the other taluk after the formation of the new taluk as the summonses in the record will clearly bear out.

4. Then I most humbly beg to submit the case has been begun even in the very first adjournment I gave ~~xxxxx~~ after the accused appeared in Court, that is on 23-9-37 and the complainant has been examined and on every other date of hearing witnesses have been examined and only one or two adjournments are given because of the absence of the witnesses and on these dates also the complainant undertook to get her witnesses ~~into~~ and I well remember she did not want co-ercive process.

5. Then I most respectfully beg to submit two adjournments are given in September 1937, 3 adjournments in February, 2 adjournments in March 1938, 3 in April, 4 in May, 5 in June, 3 in July, 2 or 3 in August; all the adjournments are given at very short invervals ranging from a day to 13 days in my anxiety to get through the case as early as possible by wedging in this case between the other older cases more than a year old of which I beg to submit ~~respectfully~~ sincerely with the sanguine hope of getting through as much work as possible; the reasons that were uppermost in my mind in posting 2 or 3 more cases than could be reached in a day along with old cases are I most repectfully beg to submit (1) that it ~~often~~ often happens that one or the other of the accused in one or 2 cases posted for the day do not ~~xxxxxxx~~ turn up at all and if it so happens that they are not under exemption or even if they are under exception, the lawyer who has taken exemption might not turn up at all; under such circumstances the case cannot be taken up. (2) The complainant may be absent and he sends a telegram or a medical certificate of his illness and adjournment is prayed for ~~xxx~~ under these circumstances (3) The complainant alone being present and no other witnesses and he undertakes to get them in cases where they have served and does not want coercive process and in some cases witnesses summons will not have been received

served or unserved; Under these and other numerous cercumstances to be on the safe side that the work of the court doesnot collapse some more cases are posted.

6. Again I most respectfully beg to submit that on days (i) where new cases have been posted already, older cases also come up and these older cases are given preference; (ii) witnesses will have come from a distance of 50 miles and such cases have to be taken up (iii) Official witnesses coming in cases have to be examined and released and (iv) custody cases in which the accused are in custody since long or brought under custody the very day where there are a number of them and the witnesses also are produced from a long distance, these are taken up first before the others. In the particular case a list of cases that were 6 months, a year and a year and half old that had to be given pfeference will be personally submitted for kind consideration, custody cases as C.C.125, which is a committal case taken up day to day; 262, 276, 615, 585 and numberous others in which the witnesses were ready and coming from a long distance were disposed off and some of the adjournments had to be given in other cases because this court could not reach it even at 8 P.M. and I most respectfully beg to submit that under such circumstances adjournments in new cases are almost inevitable.

7. With the object of disposing of these case as speedily as possible the court has worked on sundays as on 27-2-38, 19-6-38, 10-7-38. The court has also worked not only for this case but for every other case and I may be permitted to submit most respectfully that wherever I have thought that the old cases cannot have a chance of being disposed off unless they are taken up on Holiday in view of the large number of cases, I have worked on holidays and with the consent of parties and counsels. To quote a few instances at random. Sunday 23-1-38 for C.C.509/36-37, 30-1-38 Sunday for C.C.678 of 36-37, 13/27-38 sunday for C.C.10, 228, 324, 406/37-38, 20-2-28 for C.C.21/37-38, 27-2-38 for C.C.21, C.c.8 and 10/37-38

6-3-38 for 672/36-37 13-3-38 for 692,509, 502, 427, 426/37-38 Penultimate Saturday 19-3-38 for C.C.101 and 122/37-38, Sunday for C.C.20/37-38 again on 27-3-38 for C.C.39/37-38, 1-5-38, 5-6-38, 12-6-38, 18-6-38, 19-6-38, 26-6-38, 10-7-38, 23-7-38, 7-8-38 and on subsequent dates also as the court diary shows; on most of the working days, the court has worked till 7-30 and 8 P.M. in the night in the interest of disposing of old cases which will accumulate month after month.

(8) This case in which the accused appeared on 23-9-37 because 6 months old by the 3rd week of march; in the mean time by the end of December 1937, 27 cases became 6 months old to be disposed of, including 6 cases of 36-37; 31 cases by the end of March 1938, 39 cases by the end of June 1938, 32 cases by the end of September 1938, according to the lists maintained by me month after month and quarter by quarter with the object of having in view the speedy disposal of cases and not to allow them to accumulate or become old and all these cases have to be attended to most of them being older than this, along with this case and at the end of September 1938 only 3 cases remained of the 129 or 6 months old and over. So, I most respectfully beg to submit this case alone could not be particularly taken up when there were older cases pending for more than a year and this case had been started at the very outset and very short adjournments were given to see that this case also is disposed off as quickly as possible.

(9) Then again I may respectfully submit this case could not be taken up day to day because, the records had to come from two taluks, and official witnesses had to be summoned and on the days witnesses were ready the requisite records were not available and vice versa.

(10) Along side with these and also a large number of fresh institutions there were miscellaneous cases which had accumulated and had become more than a year old and these cases had to be disposed off also.

(11) So, I respectfully beg to submit that adjournment were inevitable in this case because of the large number of cases

left behind when I took charge, the absence of records in time the securing of witnesses in time and to compensate these the court has worked on Sundays and general holidays, and on working days far into the night and all this I most respectfully beg to submit in the interest of the speedy disposal of cases.

15. Next in respect of the examination of the accused I most respectfully beg to submit that I explained to the accused orally, the evidence of each one witness who deposed that he has entrusted the money to his hands and ~~xxxx~~ wrote the questions ~~on~~ general term as required by the provisions of S.342 of the code of Criminal procedure and asked him what he has got to say in respect of that evidence standing against him and then recorded his answer and he wanted to put in his statement also; after haing explained to him the evidence of every one witnesses in respect of entrustment to question him further about it, I bona fide considered this would be in the nature of cross examination of which the court ought to be very careful about as pointed ~~permitted~~ out in a case reported in 16 Mysore Law Journal page 227, ~~could be in the nature of cross examining him~~. It is under these circumstances alone, I most respectfully beg to submit that I was a bit careful not to question him further as I had explained to him in the every begining the evidence of witness after witnesses ~~witnesses~~ standing against him in respect of the entrustment.

16. I most respectfully beg to submit that consistent with the vast amount of work having been left unfinished and the accumulation of 6 months old cases, quarter by quarter, the large number of institutions, as the statements will clearly show adjournments are based on reasonable grounds and on each date of adjournment work has been turned out and where it was not possible to reach it, it is compensated by posting the case to Sundays and General Holidays and though the adjournments are large in number they are packed into less then a years, 3 or more adjournments being given in a month and which could not be ~~amended~~ avoided because of the large number of old cases to be disposed of in addition to custody cases which had to be given preference. Finally I most respectfully beg to submit that if this explanati

explanation of mine based on facts and figures is considered to be in any way not satisfactory, I most respectfully and humbly beg and pray that I amy be pardoned.

I beg to remain,
Sir,
Your most obedient servant,

K. Narasimhaiah

Special First Class Magistrate,
Sering-patam.

20

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 1st July 1939.

No. P3.1c5139-39-4

From

The *Chief Secretary to the Government of His Highness the Maharaja of Mysore.*

To Law Department.

The Registrar,
High Court of Mysore,
Bangalore.

Sir,

I am directed to request you to be so good as to furnish Government a copy of the judgment in Criminal Appeal No. 29 of 38-39 on the file of the High Court as also the records relating to C.C.No.8 of 1937-38 on the file of the Special First Class Magistrate, Seringapatam.

I have the honor to be,
Sir,
Your most obedient servant,

BKR

For Secretary to Government
Law Department.

cn-2

Enc. One copy of judgment
and one C.C. record
in 2 files.

H. Admn. (F) No. 5.

cr 139-39-5

21
439/P

R.O.C. No. 84-crl
Dis.

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,

Bangalore, 18th July 19 39.

SECY. LAW DEPT. FROM 19 JULY 1939 GOVT OF MYSORE

SECRETARIAT 20 JUL 1939 PROTECTION BRANCH

T. SHAMIENGAR, Esq., B.A., B.L.,
Registrar, High Court of Mysore.

To

C. Subrahmanya Aiyar, Esq., B.A., B.L.,
Secretary to Government,
Law Department, Bangalore.

6529

SIR,

With reference to your letter No.P3., dated 1st July 1939, I am directed to enclose a copy of judgment in Criminal Appeal No.29 of 1938-39 on the file of the High Court with the records of Criminal Case No.8 of 1937-38 on the file of the Special First Class Magistrate, Seringapatam.

I have the honour to be,

Sir,

Your most obedient servant,

T Shamiengar
Registrar.

VJC

IN THE HIGH COURT OF MYSORE AT BANGALORE.

MONDAY, the 20th day of MARCH 1939.

PRESENT

SIR D'ARCY REILLY, CHIEF JUSTICE,

and

MR. JUSTICE C.ABDUL GHANI.

CRIMINAL APPEAL NO. 29 OF 1938-1939.

Petition of Criminal Appeal against the order of acquittal passed by the Special First Class Magistrate, Seringapatam in Criminal Case No. 8 of 1937-38 for an offence under Section 406 of the Indian Penal Code.	APPELLANT The Government of Mysore (Complainant) --- V/s H.S. Sadagopiyachar (Accused)

On bail

HEARD :- Mr. Mirle N.Lakshminarayanappa, Government Advocate for Government; (Appellant)

and

Mr. H.V. Krishna Rao, Advocate for the Respondent (Accused)

JUDGMENT.

Criminal Appeal No.29 of 1938-39.

JUDGMENT.

20th March 1939. THE CHIEF JUSTICE:-

In this case the Accused was tried by the Special Magistrate of Coringapatam on a charge that on the 10th day of June 1938 at Hirenarali village he was entrusted by P.W.1, 4 and 5 respectively with three sums of money, making up a total of Rs.264-15-9, and that he committed criminal breach of trust in respect of those amounts and so was guilty of an offence punishable under section 409 of the Penal Code. The learned Magistrate acquitted the Accused, and against that acquittal the Government have brought this appeal.

It is clear I think at first sight that the learned Magistrate instead of framing a combined charge in respect of the three amounts, making up the total I have mentioned, ought to have framed three separate charges against the Accused, one in respect of the amount entrusted to him by P.W.1, viz. Rs.59-15-9, another in respect of the amount entrusted to him by P.W. 4, viz. Rs.105/-, and a third in respect of the amount entrusted to him by P.W. 5, viz. Rs.100/-, as the Accused was to be tried for offences committed against 3 different persons. But I do not think it can be suggested, and it has certainly not been suggested before us, that the Accused was prejudiced in any way by a combined charge

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being framed against him instead of three separate charges. This mistake in the Magistrate's procedure does not appear to have had any effect whatever upon the proceedings; and it may be noticed that under the provisions of section 134, Code of Criminal Procedure, the Accused might be charged with and tried for the 3 offences at one trial, as in effect indeed happened.

P.W.1, Chamanna, who was the complainant in the case, says that on the 16th of June 1936 she had her husband, Ramayya, now deceased, paid to the deceased R.Rs.-12-0 on hire-rate and that is called "contribution", i.e. contribution out of Government dues which they had into the hands of the Amin who was under the Hindu Criminal Law they paid that contribution in accordance with the Muchelika, Exhibit P.6, which Chamanna's husband, Ramayya, had executed in favour of the Government in October 1932. For that amount, which was paid by them on the 16th of June 1936, the Accused, like the witness says was the Shanbhogue of the village and told them they had to pay that amount, gave them a receipt, Exhibit P.1(a), in the note book, Exhibit P.1. Chamanna goes on to say that later on their same amount, Hingeyowda, P.W.10, took the sugar-cane crop, which he had been cultivating on the land concerned, to the sugar-factory at Mandya, and, when he received payment for the sugar-cane, R.70-0-0 was deducted from the amount, which would otherwise have been due as the price of the crop, on account of — persons due being still unpaid to the Government as the land-revenue dues which included the very

R. 59-13-9, which she and her husband had paid to the accused on the 10th of June 1930. That such a deduction was made at the factory from the price of the cane is shown by Exhibit P.3. P.W.4 Korigowda, has given evidence that on the same day, the 10th of June 1930, he paid R.103/- to the accused towards water-rate and contribution on his land in accordance with the patchalika, which he had executed in favour of the Government in regard to contribution, Exhibit P.C, in October 1930. He says that the Accused was the Shanbhogue of the village and he asked him to make the payment. That he made that payment is shown by the receipt, dated the 10th of June 1930, in his patti book, Exhibit P.10, which bears the Accused's signature. P.W.5, Chikkagutteguwda, says that on the 10th of June 1930 he paid R.100/- as contribution and water-rate on kabala to the accused in accordance with a patchalika, Exhibit P.8, which he had executed in October 1928, and the accused gave the receipt in his patti book, Exhibit P.10, for the payment. He also says that the accused was the Shanbhogue of the village and knew that he had to collect the amount. It appears that the village, Marenahalli, in which these three witnesses, P.W.2, 4 and 5, hold land is an inam village belonging to a Matt. P.W.3, a Taluk office clerk, says that the accused on the 1st of August 1930 paid into the Taluk Office on behalf of the Agent of that Matt R.107/- as shown in Exhibit P.2(a), according to which R.35-13-9 of the total was for the [illegible] and .71-1-3 was

for contribution and that the accused paid in no other amount. According to that clerk the Taluk Office is not informed by the Inamdar or by the Inamdar's Officers from which particular tenants any amount paid in has been collected. The Exhibit P.25 (a) merely shows that these amounts of interests and contribution were paid in on account of this village, Hirenamli, for the Inamdar's Agent. There are other witnesses who give evidence that amounts were collected similarly by the accused from them, which from the evidence of P.W.3 to my mind never reached the Taluk Office. Those witnesses were examined merely to show that what the accused is alleged to have done in respect of the payments made to him by P.Ws.1, 4 and 5 were not isolated acts. But we need not attend to their evidence further.

The accused does not deny that he received the three amounts I have mentioned—Rs.59-13-9 from P.W.1 and her husband, Nyavegouda, Rs.100/- from P.W.4 and Rs.100/- from P.W.5—on the 10th of June 1938 for interest and contribution, as these witnesses say. Nor does he deny that he gave the receipts, which they have produced for these payments. The learned Magistrate has found that the accused did make these payments, and that is not disputed now before us. Very strangely the accused did not choose to offer any explanation in the Magistrate's Court when he made his statement nor to indicate any explanation when he was cross-examining the prosecution witnesses as to what he did with the amounts received by him from P.Ws.1, 4

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and 5. Beyond the inference from the evidence of the Taluk office clerk, P.W.5, that Rs.107/- of the total amount so received by him tallied to the Taluk Office on the 1st of August 1936. the Accused did not himself say that that was part of the money which he had received from P.W.s.1, 4 and 5, and there is no evidence in the case that it was. Indeed there is evidence that the Accused was collecting money from other persons also in the village, and the 107 rupees may have nothing whatever to do with the collections from P.W.s.1 4 and 5. But in the circumstances as they are the inference in the Accused's favour that he has accounted for Rs.107/- of the amount which he collected from P.W.s.1, 4 and 5 by paying it into the Taluk Office on the 1st of August 1936.

In regard to the balance of Rs.236-15-9 collected by the Accused on the 10th of June 1936 from P.W.s.1, 4 and 5 neither the plea of the Accused nor any explanation offered by him in his statement to the Magistrate nor anything in the evidence in the case provides any explanation. The Accused did examine two defence witnesses but not in that connection and not, so far as I can see, for any useful purpose whatever. But it has been suggested before us, and I gather from the learned Magistrate's judgment that it was suggested before him, that the Accused may have paid the balance of that Rs.236-15-9 to the matt or to the Agent of the matt. The learned Magistrate appears to have thought that suggestion was of value to the Accused and appears to have gone further and to have regarded that as the duty of the prosecution to show that the Accused did not dispose of the balance of the

E.264-13-0 in that way. I think it is very strange that the Magistrate should have regarded the case as one in which at that stage it was the duty of the prosecution to show that the accused did not pay this money to the <u>natt</u> or to the agent of the <u>natt</u>. The prosecution had given evidence that the accused had received certain amounts from P.Ws.1, 4 and 5, which were due to the Government and were paid to him in order that they should be paid to the Government, and that at least no more than K.107/- out of those amounts ever reached the Government. That being so, surely it was for the accused to account for the balance, if he could. It was not for the prosecution to show that the accused disposed of that balance in any particular way. If the accused chose to say nothing as to what he did with that balance, then the reasonable inference was that he could not give an honest explanation in the matter. Not only did he not try to prove that he had disposed of the money in any honest way; he never even stated that before the Magistrate. All that he did apparently was what his Counsel has done here--suggest that it is conceivable that he may have paid this money to the <u>natt</u> or its agent. It cannot be reasonably suggested in my opinion that that is the way for an accused person charged with criminal breach of trust, to meet the evidence and the plain inference from the evidence for the prosecution against him in such a case. And in this case the attitude which the accused has taken up is the more strange because it appears that the Agent of this <u>natt</u>, to whom it is suggested it is conceivable he paid the money, is his own uncle;

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but he never dared to call that uncle and examine him as his witness. On the other hand, as the learned Government Advocate has pointed out, P.W.1, Channamma, said that several times she applied to the Accused after she found that the money she and her husband had paid had not reached the Government but had been claimed over again at the sugar-factory and the Accused did nothing to help her. It was never suggested to her, when she made these statements, that the Accused had explained that he had paid the money to the Agent of the matt or into the matt coffers and so was no longer responsible for it. On the evidence in this case taken with the Accused's failure to offer any explanation of it the only reasonable inference in my opinion is that the Accused did dishonestly dispose at least of so much of the L.C64-1J-9 as might not be represented by the 177 rupees paid by Lingu into the Taluk treasury on the 1st of August 1930.

Mr. Krishna Rao has suggested before us for the Accused that these amounts of water-rate and contribution, which were paid by P.Ws.1, 4 and 5 to the Accused, were not amounts which were due directly from them to the Government but were amounts for which the Inamdar was responsible to the Government and that it was the Inamdar's business to pay them to the Government and to recover them, if he wished to do so, from the witnesses. The learned Magistrate, before whom a similar suggestion appears to have been made, has I gather thought that a suggestion which might be of use to

the Accused. But for myself I cannot see how it can be of any advantage to him. I have mentioned that P.W.1's husband, P.W.4 and P.W.5 in October 1932 had each executed a mutchalika in favour of the Government, under which each had undertaken to pay this contribution by instalments to the Government. It does not appear that those amounts were amounts which it was no business of Dyavegowda or of P.W.4 or of P.W.5 to pay to the Government or to any one who professed to collect them for the purpose. But, even if Dyavegowda and P.Ws.1, 4 and 5 were entirely mistaken in supposing that it was any business of theirs to pay the money to the Accused in order that the Accused should pay it directly to the Government and on the contrary they had only to pay it to the Inamdar or the Inamdar's Agent and the Inamdar could settle with the Government, how can that effect the question of the Accused's guilt in this case? We are not concerned even with the question whether those were really the correct amounts due to the Government, which were paid by those witnesses on the 10th of June 1936. We are only concerned with the evidence, which is not disputed, that they were paid by those witnesses to the Accused and, as they say, entrusted to him, not for his own purposes, not to do as he liked with, but to dispose of by payment to the Government any mistake which those witnesses might have made about what was due from them or to whom they should pay it would not have the least bearing on the question whether they entrusted the amounts to the Accused for payment to the Government, of which the evidence leaves no question.

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Then the Magistrate appears to have been concerned to discuss whether the evidence proved that the Accused was really and properly appointed the Shanbhogue of the village of Kinnarali. That appears to me to quite irrelevant. There can be no question on the evidence, which the prosecution witnesses have given, that they paid the amounts to him understanding that he was the Shanbhogue of that village. Whether he was properly appointed or not has nobearing on the question whether he committed breach of trust in respect of the amounts so paid and entrusted to him. But the Magistrate has got into some confusion over the question — whether these witnesses were deceived. He seems to have some idea that if they were deceived and were cheated, they could not have been the victims of criminal breach of trust. His argument appears to be that, if these witnesses entrusted their money to the Accused, believing him to be the Shanbhogue but it was afterwards discovered that they had been deceived and he was not the Shanbhogue, then somehow their entrustment ex post facto evaporated. That theory is so obviously fallacious that I think it deserves no discussion.

But there is one small difficulty in the way of the conviction of the Accused, to which I have not referred. It will be remembered that the amounts entrusted to the Accused according to the prosecution evidence were Rs.50-15-9, Rs.105/- and Rs.100/- respectively. Although the evidence leaves no doubt that the Accused has failed to

account out of the total of those three amounts, - L.206-18-9, for anything beyond L.107/- to must take it I think in his favour that of the total L.107/- were paid into the Zuluk Treasury. Not which of the three amounts entrusted to the accused was satisfied by that payment into the Treasury? It will be seen that that payment is total was larger than any one of the amounts entrusted to the accused on the 10th of June 1950. It might be said as a matter of logical puzzle that the prosecution in those circumstances had not been able to show that any one of the amounts entrusted to the accused, each of which, as I have mentioned, should have been the subject of a separate charge, had not reached the Zuluk Treasury in its entirety. And, if he did not know which of the three amounts entrusted to the accused had not been paid into the Treasury how could he say that the case against the accused had been made out in regard to any of the three amounts? In the circumstances it would appear a strange result if the accused were able to escape conviction entirely on that reasoning. But I do not think we need trouble ourselves on this point for long. I have mentioned that all the three amounts entrusted to the accused were entrusted to him on the 10th of June 1950, and each of those amounts included something towards the contribution to be paid to the Government for the conversion of dry land into irrigated land, though the evidence does not show us how much in any one of the three cases. According to the matchalika which had been executed by Lyangcuda, P.W.6 and P.W.5, the amounts due for contribution had to reach the Government by the end of June each year.

P/

No doubt the amounts paid to the Accused for contribution on the 10th of June 1930 were paid in order that they should reach the Government by the end of June. Even if the 107 rupees paid by the Accused into the Taluk Treasury on the 1st of August 1930 represented part of the total of the three amounts entrusted to him by P.W.s 1, 4 and 5 on the 10th of June 1930, as part of these amounts was paid into the Taluk Treasury by the 30th of June 1930, as all of them should have been paid; and in each case by failing to make the payment into the Taluk Treasury by the end of June the Accused was making the tenants concerned liable to pay interest to the Government in accordance with their patchallikai. By that mere delay, un-explained by the Accused, there could be in the circumstances disclosed temporary misappropriation and criminal breach of trust; and I do not think we need spend time on trying to find out for which of the three amounts entrusted to the Accused, with which we are concerned, there was only temporary criminal breach of trust and for which there was more permanent breach of trust because the money was never paid to the Government at all. In my opinion we must find the Accused guilty of criminal breach of trust in regard to each of the three amounts, with which he was concerned, as if he had been charged with three different offences.

I may mention that there are some things about the procedure of the Magistrate in this case which are very unsatisfactory. He never examined the Accused properly, as he should have done, under Section 342 of the Code of Criminal Procedure. He asked him

P/

one question and took his answer. The Accused said he wished to put in a written statement, and he did so. But that written statement did not ~~exp~~ explain his position; and the Magistrate did not even ask the Accused explicitly whether he denied that the amounts were entrusted to him, as shown by the evidence of P.W. 1, 4 and 5, nor whether the receipts, Exhibits P(1), P.19 and P.20, were signed by him. However we need not suppose, and I think it would be improper to suppose, in this case that the Accused can have been affected prejudicially in any way by the Magistrate's omission in this matter. It appears that, although the Accused was concerning himself with the collection of money in this village, he is by occupation a Mukhtyar, i.e. a man who without having obtained the necessary qualifications professes to represent clients and earns money by representing clients in the Criminal Courts. The Accused is the last person who can reasonably represent that he was not acquainted with the elementary procedure of the Criminal Courts and that he did not know that he had a right to say anything he wanted to say in explanation of the evidence given against him by the prosecution or that he was not able to appreciate the effect of that very simple evidence. The Magistrate was certainly wrong in not examining the Accused properly in accordance with the provisions of Section 340 of the Code. But his failure cannot I think have prejudiced the Accused.

But there is another aspect of the learned Magistrate's procedure which should have some effect upon the result of the case in this Court. Chamaruna

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P.W.1, presented her complaint at the beginning of February 1937. In consequence of quite improperly dilatory proceedings the trial of the case did not begin until September 1937. When it had begun at that late stage, perhaps it can hardly be believed, but it is a fact, that it was adjourned 20 times and was not concluded until a year all but a few days had expired from the time the examination of witnesses began. What way of conducting the case cannot fail to have been very harassing to the accused and was in every way objectionable. Now this appeal against acquittal comes before us more than two years after Channamma preferred her complaint. We must take that into consideration I think when we are dealing with the accused.

As I have said, in my opinion we must convict the Accused on three charges of criminal breach of trust, which are in effect contained in the charge framed by the Magistrate. The offences of which we must find him guilty were certainly very serious ones, in which a man of some education and professed legal knowledge took advantage of ignorant villagers. Ordinarily I should say that such offences require very serious punishment. But, considering the way in which the Accused has been harassed by the case being spun out in the discreditable way it was, I think it will be sufficient now if we impose on him a sentence of rigorous imprisonment for three months for each of the offences, these sentences to run concurrently, and that we order that in respect of the first offence, that against Channamma P.W.1,

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the accused shall also pay a fine of Rs.200/- or in default suffer further rigorous imprisonment for one month. Out of the fine, if collected, I think -- Rs. 100/- should be paid to Channamma, P.W.1 as compensation under Section 545 of the Code of Criminal Procedure. The Accused, who is on bail, should surrender to undergo the sentence.

Sd/- H.D.C. Reilly,
Chief Justice.

MR. JUSTICE C. ABDUL GHANI:-

I agree.

Sd/- C.Abdul Ghani,
Judge.

" C o p y "

Deputy Registrar.

G. R. S. App. F. G. 3.

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

No. P 3975/Records 8-12-39

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To

The Registrar
High Court

Sir,

With reference to your
Confl Official No Roc 227/39-40
Dt. 27. 11. 1939 furnishing
the Opinion of the High
Court on the explanation
of Mr M. Narasimha Swamy
in connection with the delay
~~C~~ in the trial in C.C. No
8/1937-38 on ~~his~~ file, I
am directed to state
that Govt agree with
the Opinion of the High
Court that no further
~~action~~ reprimand than what is
contained in High Court
~~adjournment~~ judgment in criminal
Appeal No 29 of 1938-39
is necessary and the Officer

the file of the
Special First class
Magistrate Srirangapatam

WD 03603—GPB—15,000—8-7-35

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may be informed that his explanation is unsatisfactory.

The records received with your letter No 84/CA dt 19.7.39 are returned herewith

I have etc

DRA. 5-12-39

for Cy to Govt
Law Dept.

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GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 8.12.39

No. P397 S-1/cs 139-39-6
Secn. Records

From

The Secretary to the Government of His Highness the Maharaja of Mysore,
Law Department.

To

The Registrar,
High Court of Mysore,
B a n g a l o r e.

Sir,

With reference to your Un-official No.R.O.C.225/39-40 dated 27th November 1939, furnishing the opinion of the High Court on the explanation of Mr.M.Narasimhaswamy in connection with the delay in the trial in C.C.No.8/1937-38, on the file of the Special First Class Magistrate, Seringapatam, I am directed to state that Government agree with the opinion of the High Court that no further reprimand than what is contained in High Court ~~adjournment~~ judgment in Criminal Appeal No.29 of 1938-39 is necessary and that the Officer may be informed that his explanation is unsatisfactory.

The records received with your letter No.84/Crl. dated 19th July 1939 are returned herewith.

I have the honour to be,

Sir,

Your most obedient servant,

BKR

Secretary to Government,
Law Department.

K.M.R.2.